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**Procurement Policy and Procedures Manual**

**KTCO-88-11**

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KAYENTA TOWNSHIP  
COMMISSION

PROCUREMENT POLICY  
AND  
PROCEDURES MANUAL

As amended October 12, 2011

Kayenta Township Commission  
Procurement Policy and  
Procedures Manual

# **Kayenta Township Commission Procurement Policy**

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## **SECTION 1**

### **GENERAL PROVISION**

- 1.1 PURPOSE.** The Kayenta Township, by its Board of Commissioners, adopts these rules to:
- a. meet any federal standards to ensure that such property, materials and services are obtained in compliance with the provisions of applicable federal statutes and executive orders;
  - b. define the specific procedures for each type of purchases;
  - c. ensure that all purchases in procurement are subject to the proper authorization.
- 1.2 DEFINITIONS**
- a. "Bidder prequalification" means determining in accordance with rules adopted pursuant to this policy that a prospective bidder or offer satisfies the criteria for being included on the bidders list.
  - b. "Quotation Sheet" means a form used to obtain quotes for goods and services in compliance with the Kayenta Township procurement policy.
  - c. "Business" means any corporation, partnership, limited liability company, limited liability partnership, individual, sole proprietorship, joint venture, or other private legal entity.
  - d. "Town Manager" means the director of the Township responsible for its operations and is also the contracting officer. All contracts and modifications shall be executed by the Town Manager or his/her designee upon written designation.
  - e. "Construction" means the process of building, altering, repairing, improving or demolishing any public structure or building, or other public improvements of any kind to any public real property. Construction does not include the routine operation, routine repair or routine maintenance of existing structures, buildings or real property.
  - f. "Contract" means all types of Kayenta Township agreements for the procurement of materials, services, construction or property.
  - g. "Contract modification" means any written alteration in the terms and conditions of any contract accomplished by mutual action of the parties to the contract.
  - h. "Contracting Officer Representative" means the Township employee responsible for (a) receiving and reviewing bids, proposals, and solicitations; (b) reviewing the qualifications of bidders and enforcing the bidder disqualification provisions of the regulation; (c) monitoring and enforcing Township contracts; (d) and doing any and all tasks and functions necessary and relating to ensuring compliance with this policy.
  - i. "Contractor" means any person who has a contract with the Township.
  - j. "Data" means documented information, regardless of form or characteristics.
  - k. "Designee" means a duly authorized representative of the Township or the Town Manager.
  - l. "Employee" means an individual classified as an employee by the Township personnel policies and procedures.
  - m. "Invitation for Bids" (IFB) means all documents, whether attached or incorporated by reference, which are used for soliciting bids in accordance with procedures described herein at section 2.2.
  - n. "Materials" means all property, including equipment, supplies, sand, rock, gravel, printing, insurance and lease of property, but does not include land, a permanent interest in land, fixtures, and real property or leasing space.
  - o. "Official" means an elected official of the Kayenta Township such as Commissioners and/or members of the ITC Committee such as the Business Leasing Committee and any other committees the Township will established.
  - p. "Person" means any corporation, business, individual, union, committee, club, or other organization or group of individuals.
  - q. "Procurement" means buying, purchasing, renting, leasing or otherwise acquiring any

materials, services or construction. Procurement also includes all functions that pertain to the obtaining of any material, service or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

- r. "Request for information" means all documents issued to vendors for the sole purpose of seeking information about the availability in the commercial marketplace of materials or services.
- s. "Request for Proposals" (RFP) means all documents, whether attached or incorporated by reference, which are used for soliciting proposals in accordance with procedures prescribed at section 2.3.
- t. "Responsible bidder or offeror" means a person who has the capability to perform the contract requirements and the integrity and reliability to assure good faith performance.
- u. "Responsive bidder or offer" means a person who submits a bid that conforms in all material respects to the invitation for bids or requests for proposals.
- v. "Services" means the furnishing of labor, time or effort by a contractor or subcontractor which does not involve the delivery of a specific end product other than required reports and performance. Service does not include employment agreements or collective bargaining agreements.
- w. "Subcontractor" means a person who contracts to perform work or render services to a contractor as defined by this section or another subcontractor as a part of a contract with the Township.

### 1.3 APPLICATION

This Procurement Policy applies to all purchases of materials, services, property, and construction contracts or agreements entered into by the Township after the effective date of this policy. It shall apply to all expenditure of funds by the Township for purchasing, *irrespective of the source of funds; however, nothing in this policy shall prevent the Township from complying with the terms and conditions of any grant, contract, gift or bequest that is otherwise consistent with law.* The term "procurement," as used in this policy, includes both contracts and modifications (including change orders) for all procurement methods in this policy.

### 1.4 TOWN MANAGER'S RESPONSIBILITIES

The Town Manager or his/her designee shall ensure that:

- a. Procurement requirements are subject to a planning process to assure efficient and economical purchasing with the intention of obtaining adequate and reasonable competition.
- b. All purchasing transactions, contracts, agreements or modifications should be in writing, clearly specifying the desired materials, services, or construction, and are supported by sufficient documentation regarding the history of the procurement, including:
  - 1. The minimum method of procurement chosen;
  - 2. The selection of the contract type;
  - 3. The rationale for selecting or rejecting offers;
  - 4. The basis for the contract price.
- c. The contract award is made to the offeror whose proposal offers the greatest value to the Township, considering price, technical, and other factors as specified in the solicitation.
- d. Sole sourcing shall be disallowed except for urgent and emergency situations. Sole sourcing must be justified and attached to the contract and/or the vendor quote and quotation sheet.
- e. Officers and employees of the Kayenta Township shall disclose conflicts of interest and other factors that may be deemed an impropriety of their participation in the selection of the contractor and recuse themselves of any potential conflicts that will have an adverse effect on the Township. Arms length bargaining should be practiced to the fullest extent possible.

- f. The Kayenta Township Personnel Policy & Procedures will be enforced to the fullest extent should there be proof of a conflict of interest or impropriety that is not in compliance with the Kayenta Township policies.

#### **1.5 CONTRACTOR OR VENDOR RESPONSIBILITIES.**

Procurements shall be conducted only with responsible contractors, i.e., those who have the technical and financial competence to perform and who have a satisfactory record of integrity. The Township shall review each proposed contractor's ability to perform the contract successfully, considering factors such as the contractor's integrity including a review of the list of "*Parties Excluded from Federal Procurement and Non-procurement Programs*" published by the U.S. General Services Administration; compliance with public policy; and record of past performance including contacting previous clients of the contractor. Contracts shall not be awarded to debarred, suspended, or ineligible contractors. Contractors shall be in compliance with procurement standards of conduct and potential sanctions contained in section (6) of this policies and procedures.

## SECTION 2

### PROCUREMENT METHODS

One of the three methods of procurement shall be used:

1. Sealed bids
2. Competitive proposals
3. Non-competitive proposals

The three circumstances shall be applied carefully, not for convenience.

#### 2.1 PURCHASING THRESHOLDS

Kayenta Township shall use the following levels of thresholds for purchasing requirements:

- a. Purchases per item \$3,000 and below \$5,000 - two (2) verbal quotes documented on the bid quotation sheet if the price received is considered reasonable. The selected quote shall be documented on the quotation sheet, signed by the individual who obtained the quotes and submit to the Department Director for approval.
- b. Purchases above \$5,001 up to \$10,000 - A minimum of three (3) quotations shall be solicited which may be obtained orally, by telephone, facsimile, e-mail or other procedure that shall be documented on the bid quotation sheet request. The selected quote must be documented on the bid quotation sheet, signed by the individual who obtained the quotes and submitted to the Department Director for approval.
- c. Purchases above \$10,001 - A minimum of three (3) written quotations shall be solicited, which may be obtained by facsimile, e-mail or other documented correspondence and these quotes shall be followed with a written confirmation by the suppliers/vendors. The selected quote must be documented on the quotation sheet, signed by the individual who obtained the quotes and submit to the Department Director for approval and forwarded to the Finance Director to verify purchasing and budget compliance. All purchases shall be within the approved budget line item allowable cost. The selected quote/vendor must be documented on the quotation sheet.

#### 2.2 SEALED BIDDING

- a. **Conditions for Use.** Contracts shall be awarded based on competitive sealed bidding if the following conditions are present:
  1. A complete, adequate, and realistic specification or purchase description is available;
  2. Two or more responsible bidders are willing and able to compete effectively for the work;
  3. The procurement lends itself to a firm fixed price contract;
  4. The selection of the successful bidder can be made principally on the basis of price.

#### SEALED BIDDING PROCEDURES

- a. Invitation for bids format includes the following:

1. Cover Letter - briefly explains the basic work required. This may include bonding requirements.



2. **Face Page** - provides information about the IFB; bid opening time, point of contact and address for submission of bids.

Section a - Prices

Section b - Specifications of Statement of Work (SOW)

Section c - Mandatory Clauses

List any additional contract terms such as, time for performance, bonding requirements, or amount of time which bidders must hold their bids open.

Section d - Instructions to Bidders/Offerors

- b. **Pre-Bid Conference** – is optional and gives bidders an opportunity to discuss the IFB and ask questions. If required, the notice of pre-bid conference must be given in the IFB. A conference shall be scheduled so as to allow bidders time to revise their bid prior to bid opening. Nothing discussed at the conference changes the IFB terms unless a written amendment is issued. A meeting transcript shall be sent to bidders who received the IFB.
- c. **Restricted Solicitations for Indian Preference** - The IFB may be restricted to qualified Indian owned economic enterprises in the event federal funds are being utilized and if it is anticipated that two or more qualified Indian organizations or enterprises are likely to satisfactorily respond to procurement.
- d. **Bid Opening and Award.** Bids shall be opened on the scheduled date and time listed in the IFB. This information is recorded for the procurement file. Questions or disagreements are not considered at bid opening. The contract award is not made at bid opening and late bids are recorded as a late bid and retained unopened in the contract file.
- e. **The bidder who meets the following requirements is awarded the contract:**
  - (1) **Responsiveness** - the bidder who submits a bid that conforms in all material respects to the IFB or RFP.
  - (2) **Price Reasonability** - the prices to be paid for the specifications are reasonable.
  - (3) **Contractor Responsibility** - means that the bidder has the capability to perform the contract requirements and the integrity and reliability to assure good faith performance.
- f. **Mistakes in Bids.**
  - 1. Corrections or withdrawal of inadvertently erroneous bids may be permitted by written or telegraphic notice for bids prior to the time set for bid opening. The bidder is legally bound to the bid, as submitted, after the bids have been opened. The only exception is an obvious mistake in the bid, such as a clerical error or misplaced decimal.
  - 2. All decisions to allow corrections or withdrawal of bid mistakes shall be supported by a written determination signed by the Contracting Officer Representative. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the Township or fair competition shall be permitted.
  - 3. **Rejection of Bids** - Any or all bids or proposals may be rejected in whole or in part as may be specified in the solicitation if it is in the best interest of the Township. The reason for the rejection shall be made a part of the procurement file and the reasons for rejection shall be provided upon request to any offeror solicited.
  - 4. Minor informalities may be waived if it is in the best interest of Township.
- g. **Wage Rates for Construction Contracts**

Wage rates on federal projects must be in compliance with applicable federal labor laws as set forth in the Davis-Bacon Act. The Township shall obtain a wage determination at least 45 days before issuing an IFB and incorporate the determination into the IFB.

Contractors and subcontractors are responsible for paying according to the wage determination and are responsible for compliance. The Township Compliance Officer shall review contractor and subcontractor reports for accuracy and to resolve discrepancies. The Township shall retain all reports (such as certified payroll reports) for 3 years after the date of contract completion and acceptance.

## 2.3 COMPETITIVE PROPOSALS

- a. **Conditions for Use.** Competitive proposals may be used if there is an adequate method of evaluating technical proposals and where the Township determines that conditions are not appropriate for the use of sealed bids. A minimum of three proposals shall be solicited.
- b. **Solicitation.** The request for proposals (RFP) shall clearly identify the relative importance of cost/price and other evaluation factors and sub-factors, including the weight given to each technical factor and sub-factor. A mechanism for fairly and thoroughly evaluating the technical and price proposals shall be established before the solicitation is issued. Proposals shall be handled so as to prevent disclosure of the number of offerors, identity of the offerors, and the contents of their proposals. The proposals shall be evaluated only on the criteria stated in the request for proposals. All proposals must be date stamped.

## COMPETITIVE PROPOSAL PROCEDURES

- a. **Request for Proposals (RFP) format includes the following:**

1. Cover Letter - briefly explains the basic work required and may include bonding requirements.
2. Face Page - provides information about the RFP, closing date and the point of contact and address for submission of proposals.

Section A - Prices - A blank form that bidders use to insert their prices.

Section B - Specifications Statement of Work (SOW)

Section C - Mandatory Clauses

List additional contract terms such as time for performance, bonding requirements, and the amount of time which offerors must hold their proposals open.

Section D - Instructions to Offerors – May Include the Following:

A certificate of Indian preference; also, if necessary, whether samples or descriptive literature are required, and whether optional items will be considered in the evaluation for award.

Section E - Evaluation Criteria

3. Technical evaluations of proposals received shall be made. (See evaluation process).

### Evaluation Plan

Develop an evaluation plan prior to receiving proposals describing the process of evaluating & methodology of scoring proposals. Outside information should not be considered when scoring proposals. Ensure the confidentiality of the evaluation process.

### Evaluation Process

An evaluation team shall be appointed to review the RFP and complete the initial evaluation report.

The cost and the technical portions of the proposal shall be kept separate. The report shall contain a narrative description of the procurement, a ranking of all proposals, scores for each criterion, and total score. It should also include a discussion of the proposal strength and weaknesses and any reservations regarding the ability to perform. All evaluators must sign the evaluation report.

- b. **Mistakes in proposals** – Proposals may be withdrawn or corrected during negotiations and Offerors may modify their proposals. Modifications will be accepted if submitted prior to

the due date. After the due date, the offeror may withdraw the proposal or the Township may accept a modification if it makes a successful proposal more advantageous to the Township.

- c. **Amending the solicitation** – A written addendum will be required if the original RFP needs to be changed before the due date. It must be mailed to each offeror who received the RFP. Offerors may then modify their proposals prior to the due date and they will be automatically accepted. If the change is substantial to the RFP, such as a new requirement, then a new solicitation shall then be issued. Offerors may withdraw their proposal or the Township may accept a modification if it makes a successful proposal more advantageous to the Township.
- d. **Negotiations.** Unless there is no need for negotiations with any of the offerors, negotiations shall be conducted with those who submit proposals determined to have a reasonable chance of being selected for award, based on evaluation against the technical and cost/price factors as specified in the RFP. Such offerors shall be afforded fair and equal treatment with respect to any opportunity for negotiation and revision of proposals. The purpose of negotiations shall be to seek clarification with regard to and advise offerors of the deficiencies in both the technical and cost/price aspects of their proposals so as to assure full understanding of and conformance to the solicitation requirements. No offeror shall be provided information about any other offeror's proposal, and no offeror shall be assisted in bringing its proposal up to the level of any other proposal. Offerors shall not be directed to reduce their proposed costs/prices to a specific amount in order to be considered for award. A common deadline shall be established for receipt of proposal revisions based on negotiations.
- e. **Award.** After evaluation of proposal revisions, if any, the contract shall be awarded to the responsible firm whose qualifications, cost/price and other factors considered, are the most advantageous to the Township.

#### **2.4 NONCOMPETITIVE PROPOSALS (Sole Source Procurement)**

- a. **Conditions for use.** Procurements shall be conducted competitively to the maximum extent possible. Procurement by noncompetitive proposals may be used only when the award of a contract is not feasible using sealed bids, or competitive proposals, and one of the following applies:
  - 1. The item is available only from a single source, based on a good faith review of available sources;
  - 2. An emergency exists that seriously threatens the public health, welfare, or safety, or endangers property, or would otherwise cause serious injury to the Township, as may arise by reason of a flood, earthquake, epidemic, riot, equipment failure, or similar event. In such cases, there must be an immediate and serious need for supplies, services, or construction such that the need cannot be met through any other procurement methods and the emergency procurement shall be limited to those supplies, services, or construction necessary to meet the emergency;
  - 3. Urgency exists in which goods or services must be procured expediently to prevent a lost opportunity or financial detriment to the Township or the project itself;
  - 4. After solicitation of a number of sources, competition is determined inadequate.
- b. **Justification.** Each procurement based on noncompetitive proposals, or when only one offer is received, or for other procurements as deemed necessary by the Township (i.e., when contracting for professional, consulting, or architect/engineer services), a cost analysis verifying the proposed cost data, the projections of the data, an evaluation of the specific elements of cost and profit, and a written determination of the basis for the sole source procurement shall be included in the contract file. Sole source procurement shall be avoided, except where no reasonable alternative sources exist.

## **2.5 CANCELLATION OF SOLICITATIONS**

An invitation for bids, request for proposals, or other solicitation may be cancelled before offers are due if:

- The Township no longer requires the supplies, services or construction;
- The Township can no longer reasonably expect to fund the procurement;
- Proposed amendments to the solicitation would be of such magnitude that a new solicitation would be desirable, and;
- Kayenta Township reserves the right to cancel any and all procurement prior to the receipt of goods and services or commencement of work for sealed bids and competitive proposals. The Township will not be responsible for costs incurred by bidders up to time of cancellation.

The reasons for cancellation shall be documented in the procurement file and the reasons for cancellation shall be provided upon request to any offeror solicited.

## **SECTION 3**

### **TYPES OF CONTRACTS, CLAUSES, AND CONTRACT ADMINISTRATION**

#### **3.1 CONTRACT TYPES**

Any type of contract which is appropriate to the procurement and which will promote the best interests of the Township may be used.

#### **3.2 OPTIONS**

Options for additional quantities or performance periods may be included in contracts, provided that:

1. The option is contained in the solicitation;
2. The option is a unilateral right of the Township;
3. The contract states a limit on the additional quantities and the overall term of the contract;
4. The options are evaluated as part of the initial competition;
5. The contract states the period within which the options may be exercised;
6. The option may be exercised only at the price specified in or reasonably determinable from the contract;
7. The option may be exercised only if determined to be more advantageous to the Township than solicitation for a new procurement.

#### **3.3 CONTRACT CLAUSES**

In addition to containing a clause identifying the contract type, all contracts shall include any clauses if they are required by federal statutes, executive orders, and their implementing regulations, such as the following:

- a. Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, with such sanctions as may be appropriate;
- b. Termination for causes and convenience by the Township, including the manner by which it will be effected and the basis for settlement (all contracts in excess of \$10,000);
- c. Termination for default by contractor;
- d. Equal employment opportunity compliance with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity" as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor Regulations (41 CFR Chapter 60). (All Construction contracts awarded in excess of \$10,000);
- e. Anti-kickback act - compliance with the Copeland "Anti-Kickback" Act (18 USC 276a 59 a-7) as supplemented by Department of Labor regulations (29 CFR Part 5). (All construction contracts awarded in excess of \$10,000 by the Township);
- f. Davis-Bacon Act - the required prevailing wage statement of 24 CFR 1000.16;
- g. Compliance with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5) (All construction contracts in excess of \$2,000 and in excess of \$2,500 for contracts which involve the employment of mechanics or laborers);
- h. Reporting requirements & patent rights - notice of awarding agency requirements and regulations pertaining to reporting and patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract, copy rights and rights in data;

- i. Awarding agency requirements and regulations pertaining to copyrights and rights in data;
- j. Examination of records by the Comptroller General and retention of records for three years after final payment and closeout;
- k. Clean air and water - compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857 (h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15).(Contracts and sub-grants in excess of \$10,000);
- l. Energy efficiency standards - mandatory standards and policies relating to energy efficiency which are contained in the state or tribal energy conservation plans issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163);
- m. The mandatory Section 7 (b) clause incorporating provisions of the Indian Self Determination and Education Assistance Act (24 U.S.C. Sec. 450e (b) found at 24 CFR Sec.1000.50 (a) (1) ;
- n. Any required and applicable tribal requirements with respect to contract terms.

### **3.4 CONTRACT ADMINISTRATION**

The Town Manager or his/her designee shall be responsible for efficient contract administration, including the following:

- a. Monitoring contract performance and being aware of contract terms and conditions;
- b. Work inspection and contract compliance;
- c. Contract and warranty filing and retention;
- d. Monitoring contractor performance through inspections;
- e. Evaluating contract work and performance upon the receipt of request and prior to such payment;
- f. Verifying payment requests;
- g. Monitoring contract progress in accordance with the Township approved time schedules and making certain such time schedules are followed;
- h. At the completion of the contract, the Town Manager or his/her designee shall ensure that each contract is properly closed out. The contractor shall submit a final pay request to the Township. All property and equipment belonging to the Township shall be returned with the final pay request.

## **SECTION 4**

### **BID PROTESTS, DISPUTES, CLAIMS AND ISSUES**

#### **4.1. GENERAL**

It is the Township's policy to resolve all contractual issues informally at the Township level without litigation.

#### **4.2 BIDDER PROTESTS**

Any bidder or disputant of a decision made pursuant to this rule (4.2) must exhaust the administrative remedy as set forth in this rule. This rule shall govern complaints and protests with respect to Indian preference procedures and any other procurement decision under these rules.

- a. Only a person or business entity claiming to have been adversely and directly affected by an action or inaction of the Township regarding the provision of preference to Indians in contracting, subcontracting, employment, or training, or regarding a Township decision under these rules of federal procurement regulation may make a complaint;
- b. A complaint or protest must be filed with the Town Manager of the Township no later than twenty (20) calendar days following the action, event or omission upon which the complaint or protest is based;
- c. All complaints must be in writing and signed by the complainant and must reasonably specify the action or omission which the complainant contends constitutes a violation of this policy;
- d. The Township shall stamp all complaints with the date and time upon receipt;
- e. The Township shall acknowledge receipt of the complaint in writing to the complainant immediately upon receipt;
- f. The Town Manager or his designee shall investigate the complaint and within 20 days of acknowledging the receipt of the complaint, meet or communicate by mail or telephone with the complaining party in order to attempt a resolution of the matter, The Town Manager shall make a written determination upon the complaint within thirty (30) days after the receipt of the complaint;
- g. The Town Manager may undertake discussion, negotiation, mediation, or other methods to resolve the complaint, using that method of resolving the matter, which, in his or her discretion, serves the best interests of the Township. All complaints must be resolved as expeditiously as possible;
- h. If the Town Manager finds noncompliance with this policy, he or she may grant reasonable relief to resolve the complaint or the protest may be dismissed.
- i. Procurement awards or contracts affected by complaints under this rule shall not be finally awarded unless the Town Manager has determined that the complainant is not a proper party under this rule or that no violation of the policies has occurred. Where the Town Manager has determined that the person is a proper complainant and that he or she may have a valid claim, the Township may proceed with the award or contract where the circumstances require, providing for the rights of the affected parties;
- j. The decision of the Town Manager shall be in writing, state the reasons for it, and copies shall be provided the complainant. The written decision of the Town Manager shall constitute final Township action on the matter.

## **SECTION 5**

### **ASSISTANCE TO SMALL AND OTHER BUSINESSES**

#### **5.1 REQUIRED EFFORTS**

The Township shall make efforts to ensure that individuals or firms located in or owned in substantial part by persons residing in the area of a Township project are used when possible. Such efforts shall include, but shall not be limited to:

- a. Including such firms, when qualified, on solicitation mailing lists;
- b. Encouraging their participation through direct solicitation of bids or proposals whenever they are potential sources;
- c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by such firms;
- d. Including in contracts a clause requiring contractors, to the greatest extent feasible, to provide award subcontracts for work in connection with the project to business concerns which are located in, or owned in substantial part by persons residing in the area of the project.
- e. Requiring prime contractors, when subcontracting is anticipated, to take the positive steps listed in a. through d. above.

#### **5.2 INDIAN PREFERENCE**

Preference in the award of contracts and subcontracts shall be given to Indian-owned economic enterprises and Indian organizations. The definitions of "Indian", "economic enterprise", and "Indian Organization" shall be defined in 24 CFR 1000.48; 1000.50; 1000.52, respectively.

- a. Exception: Navajo Preference, as implemented by Navajo Law, shall apply in the award and implementation of contracts where the source of funding can be clearly identified as non-federal funds, but only to that portion of work to be accomplished with the non-federal funds.
- b. Kayenta Township shall require the following information from offerors and bidders seeking to qualify as Indian organizations or Indian-owned economic enterprise before submitting a bid or proposal or at the time of submission.
  - (1) Evidence showing fully the extent of at least fifty one per cent (51%) Indian ownership and interest;
  - (2) Evidence sufficient to demonstrate to the satisfaction of the Township that the offeror or bidder has the technical, administrative, and financial capability to perform contract work of the size and type involved.
  - (3) Evidence showing an independent and continuing operation for profit, performing a commercially useful function which is owned and controlled by one or more Indians. The ownership and control by an Indian or Indian organization or Indian-owned economic enterprise shall be real and substantial, and shall be indicated by customary incidents of ownership, as demonstrated by an examination of the substance rather than the form of ownership and operating arrangements.
  - (4) Evidence that an individual or business entity has been certified by the Navajo Nation as being Indian, an Indian organization, or an Indian – owned economic enterprise award shall be sufficient to qualify under this or any succeeding plan, unless it is determined by the Township that a further review is necessary.



- c. Where the Township has a reasonable expectation that two or more qualified Indian organizations or enterprises are likely to satisfactorily respond to procurement, the procurement solicitation, bid, or requests for proposals may be restricted to such qualified firms or persons. The Township may prefer not to restrict the solicitation and procurement to qualified Indian enterprises or organizations where such appears to be in the best interests of the Township or where greater competition may result in a superior product, better services, or a lower cost.

d. Certification Investigation:

Kayenta Township shall investigate Indian ownership arrangements beyond formal documents submitted by each entity if:

- (1) The firm is applying for certification with the Township for the first time;
- (2) The firm is newly formed or the firm has Indian ownership of less than 100 percent.
- (3) There is previous or continuing employer-employee relationship between or among present owners;
- (4) A business which is not an Indian or Indian organization or Indian-owned economic enterprise has an interest in the firm.
- (5) The ownership of the firm has changed since documents have been submitted to the Township; and/or
- (6) Review of the documents submitted with the application raises serious concerns regarding either ownership or control of the firm.

## **SECTION 6**

### **ETHICS IN CONTRACTING**

#### **6.1 GENERAL.**

The Township shall adhere to the following code of conduct and shall establish a system of sanctions for violations, consistent with applicable federal or local law.

#### **6.2 CODE OF CONDUCT**

No employee, officer or agent of the Township shall participate or be involved in the selection, award or administration of any contract if a conflict of interest, real or apparent, would be involved. Such conflict would arise when:

- a. His/her immediate family, partner, or relatives (by marriage, adoptive, or extended family) are involved in making an award;
- b. An organization which employs, is negotiating to employ, or has an arrangement concerning prospective employment with any of the above;
- c. An organization which has a financial or other interest in the business or contractor selected for award;
- d. A former Township employee bids who terminated within the last 365 days of proposed contract; however, further review shall be conducted to determine if there would be a conflict of interest;
- e. Employees, officers, contract employees or agents of the Township solicit or accept gratuities, favors, or anything of monetary value from contractors, subcontractors, potential contractors, or parties to sub-agreements with the Township. Employees, Commissioners, or agents of the Township shall report in writing any and all unsolicited offers from any contractor, subcontractor, potential contractor, or from a party to a sub-agreement with the Township.

#### **6.3 CONFLICT OF INTEREST - Gifts of Nominal Intrinsic Value**

Nothing in rule 6.2 above shall prohibit any employee, officer, or agent, from accepting a gift where the financial interest of the donor (i.e., one who gives a gift) is not substantial or where the gift is unsolicited item of nominal intrinsic value, and the employee, officer, or agent has made a determination that no conflict of interest exists.

- a. A financial interest is "not substantial" where the person or firm offering the gift does not do so for the purpose of immediately influencing the decision of an officer or employee of the Township, but intends to generate general business good will, and where the gift is appropriate under the circumstances as a matter of normal business practice.
- b. An "unsolicited item of nominal intrinsic value" means the kind of gift or gratuity which is normally and customarily given to another in business practice. Examples of such gifts include meals and refreshments, pens, calendars, samples, or other items which businesses normally or customarily offer to those with whom they do business. The events which businesses customarily use as an occasion to give such nominal gifts include initial or out-of-town business meetings (for meals and refreshments), conventions and conferences, birthdays, Christmas, the birth of a child, or other occasions where businesses recognize individuals as a matter of business good will. In no event, shall a gift of a value of \$ 100 or more in any one calendar year be considered of "nominal intrinsic value" and in no event shall a gift of money, or other monetary items (i.e. check, gift certificate, discount, rebate, etc.,) be accepted.

The prohibition against soliciting or receiving gifts shall not apply to solicitations for contributions by employees for operations or functions of the Township, so long as no employee receives any personal benefits as a result of any contribution and so long as prior written approval of the Town Manager is obtained. "Personal benefit" does not include enjoyment of a facility, refreshments, meals, or other items purchased or contributed for the general benefit of the Township employees.

All employees, officers, contract employees or agents of the Township who accepts a gift pursuant to this section shall report in writing the acceptance of that gift to the executive director by the next business day.

#### **6.4 Penalties or Disciplinary Action**

Any employees, officers, contract employees or agents of the Township who violate these rules may be subject to disciplinary action. Any actions against employees will be consistent with the requirements of the Township Personnel Policies. The degree of discipline applied shall be reasonable and take into account the circumstances as a whole and whether or not a violation was willful.

#### **6.5 Sanctions**

- a. Any agent, contractor, subcontractor, officer or employee of a business doing contract work for the Township who violates the rules of this part may be subject to sanctions ranging from a written warning to debarment from doing business with the Township or revocation of a contract with the Township. This part constitutes notice to contractors, subcontractors, and others of both the standards of conduct and potential sanctions under this part and the dissemination of these rules.
- b. Depending upon the severity of the offense, the range of sanctions shall include a written warning, suspension, debarment, or revocation of an existing contract. A suspension from contracting with the Township shall not exceed one year unless allowed by these rules. A debarment shall not be less than one year unless allowed by these rules.
- c. The causes for suspension or debarment include the following:
  - (1) Conviction of any person or any subsidiary or affiliate of any person for the commission of a criminal offense arising out of obtaining or attempting to obtain a public or private contract or sub-contract; or in the performance of such contract or subcontract.
  - (2) Conviction of any person or any subsidiary or affiliate of any person under any Navajo, state or federal statute for embezzlement, theft, fraudulent schemes and artifices, fraudulent schemes and practices, bid rigging, perjury, forgery, bribery, falsification or destruction of records, receiving stolen property or any other offense indicating a lack of business integrity or business honesty.
  - (3) Conviction or civil judgment finding a violation by any person or any subsidiary or affiliate of any person under any state or federal antitrust statute.
  - (4) Violations of contract provisions of a character that are deemed to be so serious as to justify debarment action, such as any of the following:
    - a. Knowingly fails without good cause to perform in accordance with the specification or the time limit provided in the contract;
    - b. Failure to perform or unsatisfactory performance in accordance with the terms of one or more contracts, except that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered as a basis for debarment;
    - c. Failure to pay or reimburse the Township for outstanding liabilities;
    - d. Non-compliance with the Navajo Nation Code;

- e. Disbarment by a state; and/or
- f. Any other cause deemed to affect the responsibility as a Township contractor including suspension or debarment of such person or subsidiary or affiliate of such person of any other governmental entity for any cause listed herein.
- d. A written determination to suspend or debar shall be issued by the Town Manager which shall:
  - (1) State the reason for the action taken;
  - (2) Inform any suspended or debarred person involved of the right to administrative review as provided in the policy;
  - (3) A copy of the determination under this sub-section shall be mailed or otherwise furnished to any debarred or suspended person;
- e. A copy of any sanction notice imposed pursuant to this rule shall be sent to the Contracting Officer (designee) who shall maintain permanent record of the sanctions.

#### **6.6 Unauthorized Business Transaction Effect**

All purchases, procurement, contracts, and other business transactions of the Township which obligate the Township to pay monies or transfer property require the approval of the Town Manager, and where required, the approval of the Commissioners.

The actions of any officer or employee procuring goods, materials, equipment, work, or services are subject to these rules, and any transaction taken in violation of these rules is void or voidable by the Township, acting through its Town Manager and Finance Director. Strict compliance with these rules and other applicable grantor/program requirements is a condition precedent to the validity of any contract or business transaction of the Township.

Other than permitted by these rules, no officer, employee, or agent of the Township has the authority to bind the Township to procurement, purchases, or other financial transactions, and any such contract is void or voidable, at the option of the Township, and such is punishable as provided in Rule 6.4. Any person or entity doing business with the Township who violates this rule may be subject to sanctions under Rule 6.5.

#### **6.7 Reimbursement for Prohibited Transactions**

Any employee, contract employee, officer or agent of the Township and any person or entity who enters into prohibited transactions in violation of these rules will be required to reimburse the Township for any expenditure of its funds, damages, or other losses; and any officer, employee, contract employee or agent of the Township and any person or entity receiving a gift or engaging in a conflict of interest in violation of these rules will be required the same or make whole the Township for its value.

#### **6.8 Nondiscrimination**

To the extent required by the Indian Civil Rights Act of 1968 and any applicable federal or Navajo law, the Township and its officers, employees, agents and contractors or subcontractors shall not discriminate against any person in the enjoyment of their rights or privileges under this policy nor shall the Township, its officers, employees, agents and contractors or subcontractors discriminate against any person on the basis of race, color, religion, gender, national origin, age, or handicap status in employment or contracting.

**RESOLUTION OF THE KAYENTA TOWNSHIP COMMISSION**

**Rescinding the Kayenta Township Commission Purchasing Policy and Adopting and Approving the recently developed Procurement Policy and Procedures Manual.**

**WHEREAS:**

1. The Kayenta Township Commission ("KTC") has the general authority and responsibility to govern for the welfare of the Kayenta Township ("Township") and its residents, including the enactment of such ordinances, rules and regulations as it deems in the best interest of the Township; and
2. The KTC is empowered to adopt rules and regulations, both substantive and procedural, such as may be necessary to the proper and efficient administration of Township operations. The KTC has found that the proper and efficient administration and enforcement of policies for purchasing and procuring of materials, services, property, and construction contracts or agreements entered into the Township by employees and officials require procedural regulations; and
3. The commission, by Resolution KTCS-55-10 (September 13, 2010) enacted the Purchasing Policy for guidance in dealing with procurement issues, and for compliance with Navajo Nation and Federal Laws applicable to purchasing, (hereby attached as Exhibit "B"); and
4. Subsequent and additional review required the need to replace the Purchasing Policy in its entirety with a Procurement and Procedures Manual (hereby attached as Exhibit "A") that will ensure KTC purchases meet the Federal Standards of OMB Circular A-110, the Federal Procurement Policy Act, and Housing and Urban Development (HUD) regulations in procurement, and to ensure all purchases are subject to the proper budget authorizations; and
5. The KTC Procurement Policy and Procedures Manual (attached as Exhibit "A") was reviewed by the KTC Commissioners on October 05, 2011 at a duly called Commissioner Work Session and a consensus was reached to adopt the new procurement policy at the next regular KTC Commissioner's meeting.

**NOW, THEREFORE, BE IT RESOLVED THAT:**

1. The Kayenta Township Commission hereby rescinds Resolution KTCS-55-10 that has adopted and approved the Purchasing Policy and Procedures on September 13, 2010.
2. The Kayenta Township Commission hereby adopts and approves the KTC Procurement Policy and Procedures Manual hereby attached as Exhibit "A" to replace in its entirety the KTC Purchasing Policy and Procedures as approved.

**CERTIFICATION**

I hereby certify that the foregoing resolution was duly considered by the Kayenta Township Commission at a duly called meeting in Kayenta, Navajo Nation (AZ), at which a quorum was present and that same was passed by a vote of 3 in favor, 0 opposed and 0 abstained, this 12th day of October, 2011.

Motion: Rodger Grey

Second: Delores Greyeyes



Carol Todecheene, Chairperson  
Kayenta Township Commission